Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications Services	)	CC Docket No. 98-146
Capability to All Americans in a Reasonable	)	
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

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Introduction And Summary

The Commercial Internet eXchange Association ("CIX"), by its attorneys, hereby replies to the comments filed on the Notice of Inquiry ("NOI") into the deployment of advanced telecommunications capability pursuant to Section 706 of the 1996 Telecommunications Act ("1996 Act"). CIX is a trade association that represents over 150 Internet Service Providers who handle over 75% of the United States' Internet traffic.[1]

On reply CIX emphasizes four points. First, ISP choice and diversity is what has brought the abundant variety of services to *all Americans*, and it is a consumer choice that should be strengthened as xDSL services are deployed. Second, the Commission must resolve its

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1 The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

outstanding rules for ILEC participation in the ISP market in a way that allows independent ISPs to continue to compete effectively. Third, the Internet backbones are highly competitive and industry is investing in capacity upgrades at a phenomenal rate; there is no need for Commission involvement on the Internet backbone. Finally, the primary focus of this proceeding should be on opening up the ILEC network for competition, and not on relieving ILECs of their unfulfilled regulatory obligations.

Discussion

I. ISP Choice and Diversity Delivers Internet Services to All Americans.

CIX agrees with many commenters that ISP choice is a key element in any regulatory effort to promote the deployment of underlying advanced telecommunications capability.[2]

Today's Internet access market offers all Americans a multitude of services across a range of providers. The proliferation of competitive ISP service in the U.S. in just the past four years, and the roll-out of Internet service to the public, has been truly amazing. A recent comprehensive and independent study of the ISP industry found that "[m]ore than 90 percent of the US population has access by a short local phone call to seven or more ISPs."[3] Further, the

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2 Even Ameritech notes that "reasonable deployment" of advanced telecommunications capability should mean "consumer sovereignty." Comments of Ameritech, Attachment A at 1.

3 Downes, Tom and Greenstein, Shane, "Universal Access and Local Commercial Internet Markets," at p.21 (June 8, 1998), *found at*, http://skew2.kellog.nww/ngreenste/research.html.

study found that over 95 percent of the U.S. population has local access to at least 4 or more ISPs in a market, and 83% of the U.S. population live in markets served by 21 or more ISPs.[4] CIX believes that the universal availability of competitive Internet service in such a short amount of time has no parallel in the communications industry.

Moreover, due to its intense competitiveness, the ISP market offers consumers a diverse array of services and service providers. Downes and Greenstein found that "[t]he striking feature . . . is that many small markets are entirely supplied by local or regional ISPs."[5] The diversity of Internet services offered by ISPs in conjunction with Internet access provides consumers with a broad range of real service choices: "only a rare ISP provides nothing other than dial-up service."[6] Sources such as *thelist* catalogue the multitude of services that ISPs offer today to the American consumer.[7] Perhaps most significantly, Internet access choice and diversity of services to Americans has developed without regulatory intrusion into the ISP market.

However, the rise of ILEC entry into the retail ISP market, coupled with the introduction of DSL services, represents a significant threat to continuing ISP choice and diversity for U.S. consumers in several ways. It is abundantly clear from the ILECs' regulatory positions that their

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4 Id. at Table 1(b).

5 Id. at 22.

6 Id. at 7.

7 See http://the list.internet.com/us.html.

plan is to vertically integrate ISP service with xDSL service.[8] This is very threatening to a competitive ISP market since every other ISP in the market is dependent on the ILEC for xDSL and other telecommunications inputs to communicate with their customers.

In addition, the ILECs' marketing of packaged xDSL, CPE, and ISP service are designed to ensure that the critically important first-adopters of xDSL services will be swayed toward ILEC packaged offerings, and against consumer opportunities to select an ISP that is separate from the ordering of the underlying xDSL telecommunications. ILECs are offering as a single bundled product the DSL service, Internet access, installation for both the DSL service and Internet configuration, and hardware (e.g., modem). For example, Ameritech offers DSL and Internet access services for a single price of $49.95/month as "Ameritech.net High Speed"[9] -- no distinction is drawn between the telecommunications and information services.[10] Pacific Bell and Bell Atlantic are offering special installation discounts for customers that sign up for one-

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8 Petition of Bell Atlantic Corp. For Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Dkt. No. 98-11 (filed Jan. 26, 1998) (requesting regulatory relief to build a fully integrated facilities-based offering from the end-user to, and including, the Internet backbone); See also Comments of US West at 21-22 (FCC should permit ILECs to avoid dominant carrier regulation as ILECs enter new, adjacent markets), Attachment A (discussion of the benefits of RBOC vertical integration of telecommunications and information services).

9 http://www.ameritech.net/visitors/adsl/adsl_faq.htm

10 Ameritech's bundling approach continues for service installation, with a single $150 one-time charge for hook-up of both the Internet Access and the DSL services.

year subscriptions to their bundled offerings.[11] Finally, many ILECs are combining bundled Internet access/DSL offerings with discounts on installation or CPE: Ameritech waives the cost of hardware equipment including the modem (valued at $199.00); US West waives the customer's cost of a $300.00 modem; Bell Atlantic offers an ADSL modem for as low as $49.95 and waives inside wiring and other fees. Other unfair bundling includes BellSouth's offer to bundle local voice telephone service with its DSL/Internet access package by providing BellSouth telephone customers a $10 discount.[12] These bundling practices distort the competitive ISP market because no independent ISP could possibly offer modem give-aways or discounts on local telephone services.

Further, consumers that do manage to gain access to an independent ISP are forced onto the ILEC's bundled offering of xDSL services and the ILEC's own transport arrangements (ATM or Frame Relay). This bundling allows ILECs to raise the costs of telecommunications inputs to independent ISPs by (a) requiring every ISP to establish a separate trunk line connection to the ILEC and each data transport provider, and (b) requiring the ISPs to connect to

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11 http://www.ba.com/nr/1998/Oct/1998100501.html; http://public.pacbell.net/dedicated/dsl_solutions.html

12 http://www.bellsouth.net/external/adsl/cost.html

the ILEC's transport service, regardless of how delayed, [13] inefficient,[14] or costly the ILEC chooses to make that service. This is a classic example of a monopolist in one market – local loop facilities – raising its rivals' costs in the adjacent competitive market for Internet Services.

Finally, ISP choice is threatened because, as the ILECs aggressively roll-out xDSL, customer decisions to choose another ISP are met with ILEC penalty fees.[15] Thus, in addition to its marketing practices steering the initial xDSL customer to its affiliated ISP, the ILEC further discourages ISP choice by penalizing consumers who switch. It is significant to note that today's dial-up Internet service is, in effect, a crude form of ISP choice that will be lost in the transition to xDSL telecommunications without some regulatory protection. Today, a dial-up consumer that wants to switch its ISP is not penalized by the ILEC; the consumer merely makes another local phone call to another ISP. Thus, dial-up consumers today have the substantial advantage of ISP choice (putting aside current ILEC discrimination) because the consumer's ISP decision is not tied by the ILEC to its telecommunications service decision. As the transition to xDSL occurs, the Commission should ensure that consumers retain the ability to choose Internet services independently from their choice of local telecommunications.

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13 Utah ISPs have also noted that ISPs attempting to gain access to customers by purchasing such ILEC transport are confronted with discrimination and service delays. See Comments of the Coalition of Utah Independent ISPs at 4 ("Utah ISP Comments").

14 For some ISPs, the requirement to accept traffic via an aggregated and regional ATM or Frame Relay connection frustrates the ISP's ability to offer customers a full-range of Internet-based services. See Comments of PSINet, CC Dkt. No. 98-147 (filed Sept. 25, 1998).

15 Utah ISP Comments at 4.

CIX agrees with the Retail ISPs that the Commission can promote nondiscriminatory ISP choice for customers of ILEC xDSL services in two ways.[16] First, the Commission could impose "equal access" type obligations on ILECs in their interaction with end users for xDSL services. Second, the Commission could require structural separation of the affiliated-ISP from the ILEC, which would address the ILEC's underlying economic interest and motivation for advantaging its affiliated-ISP. CIX believes there is long-term viability to the latter approach, because it minimizes ILEC "cheating" and avoids regulatory oversight of the details of customer choice of ISPs. Further, the separations approach is supported by recent literature that contradicts the promise of ILEC assertions of economies of scope from integrating retail service offerings with network services.[17] Of course, the terms of separation are critically important. The affiliated-ISP should generally be subject to the same degree of separation as CIX recommended for the ILEC's data-CLEC.[18]

In addition, ISP choice will provide American consumers with meaningful diversity of Internet services and competitive prices only if independent ISPs have access to competitive and efficient transport arrangements to and from the ILEC xDSL facilities. As CIX and several other commenters suggested, the Commission should impose interconnection and unbundling

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16 Comments of Retail Internet Service Providers at 11-12.

17 See Milton L. Mueller, Universal Service (1997); Nicholas Economides, "The Economics of Networks," International Journal of Industrial Organization, Vol. 16, No. 4, at 673-699 (Oct., 1996).

18 See Comments of CIX, CC Dkt. No. 98-147, at 11-24 (Sept. 25, 1998).

obligations on the ILEC's xDSL and transport service offerings. First, as ITAA describes,[19] the Commission should promote unbundling of distinct ILEC xDSL retail services and data transport services by allowing competitive providers, called DCAPs, to offer ISPs a viable transport option. CIX is encouraged that the MO&O (at ¶¶ 46-49) affirms the ILECs obligation to provide interconnection and unbundled access to telecommunications. However, as the Utah ISPs have shown, at least one ILEC has been sluggish in complying with the MO&O.[20] The Commission should articulate the DCAP rights to unbundling, interconnection, and collocation in more detail.

II. ISP Access to Unbundled Telecommunications Will Improve Advanced Services for All Americans

The Internet industry has consistently demonstrated that ISP access to underlying telecommunications -- without discrimination and at cost-based rates -- is a key element to the Internet's success. With local telecommunications controlled by ILEC monopolies that are themselves in competition with ISPs, the need for regulatory oversight of the terms, practices and conditions of ILECs' telecommunications offerings is an absolute necessity.

CIX concurs with commenters that show how ISPs can make excellent use of access to unbundled local loops.[21] As CIX has previously shown, rural ISPs were providing high-speed Internet access to rural areas via inexpensive LADS circuits, until the ILEC removed those tariffs

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19 Comments of ITAA at 7-11.

20 Comments of the Coalition of Utah Independent ISPs, at 2.

21 Comments of Retail ISP Providers at 12-14; Comments of the Internet Service Providers' Consortium at 7-8; Utah ISP Comments at 7; Comments of Verio at 3-5.

in preparation for its own ADSL roll-out.[22] As CIX and others have previously argued,[23] ISPs should be provided with more functional ONA-type access to the network elements that are necessary to provide Internet services. The Commission should resolve these ISP access issues in the context of its advanced services proceedings.

Moreover, the ILEC marketing and bundling practices fail to meet the basis premises of the Commission's no-bundling rule, 47 C.F.R. § 64.702(e).[24] This rule is intended to prevent carriers, and especially monopoly carriers, from using their control over the telecommunications input as a means of unfairly disadvantaging independent providers in the CPE and information services markets.[25] However, the ILEC's bundled offerings and discounts for xDSL service combined with Internet access and/or xDSL modems offends the Commission's rule.[26] For example, Ameritech markets its DSL service only as bundled with Internet access and only

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22 Comments of CIX, CC Dkt. No. 98-26, at 12 (filed Apr. 6, 1998).

23 Comments of CIX, CC Dkt. Nos. 95-20, 98-10, at 7-12 (filed Mar. 27, 1998).

24 See also Comments of ITAA at 13-14. Given the ILECs' existing bundling practices, CIX cannot agree with Cincinnati Bell that "the market itself will make such LEC [bundling] practices non-sustainable." Comments of Cincinnati Bell Telephone Company at 11.

25 Computer II, 77 F.C.C. 2d 384, 475 (1980) (subsequent history omitted).

26 The Commission has noted that bundling is avoided only if the two services are "provided, purchased, and priced separately," and that "special discounts or incentives to take both services . . . would constitute sufficient evidence of bundling . . . ." Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, First Report and Order, 11 FCC Rcd. 21905, (¶ 120 & n. 276) (1996).

through its Internet access subsidiary, as "Ameritech.net High Speed."[27] Similarly, the web-pages of Bell Atlantic and BellSouth advertise only bundled Internet access and DSL telecommunications service offerings.[28] Bell Atlantic is further adding the "Snap" portal service into its offering, for a bundled package combining content, Internet access, and the underlying telecommunications.

Finally, the Commission must revamp its Computer III nondiscrimination rules in an expeditious manner.[29] The ISP commenters in this proceeding detailing ILEC abuses is ample evidence that the ILEC roll-out of xDSL services will present a serious challenge to the competitive ISP market. The Commission should answer this challenge by promulgating sensible nondiscrimination, separation, and ONA-type rules that allow ISPs an effective recourse against ILEC abuse.

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27 www.ameritech.com/products/data/adsl/index.html

28 www.bellsouth.net/external/adsl/cost.html

29 CIX disagrees with SBC that the existing Computer III/ONA structure, or even fewer protections, adequately addresses the concern for a competitive ISP market. Comments of SBC Communications at 10-12. In CIX's view, the Computer III/ONA-type structure designed to promote continuing competition in the information service market must now be overhauled to provide more effective rights for ISPs consistent with the Computer Inquiry principles. The process should not stagnate or suffer from the erosion advocated by SBC and other ILECs. See also Comments of GTE at 21.

III. Internet Backbones Respond Effectively To Market Demand

Despite months of RBOC allegations of a backbone capacity "shortage" and "crisis" to justify their own premature interLATA entry,[30] the comments in this proceeding once again refute the RBOCs' contentions.

CIX and other comments have presented a mountain of evidence of widespread backbone deployment and continuing investment in additional capacity. In their comments, several companies have shown that widespread backbone investment continues to grow. Sprint, for example, noted its recent commitment to upgrade "the transmission speed and bandwidth of its Internet backbone from OC-12 (622 megabits per second) to OC-48 (205 gigabits per second)."[31] AT&T, among other developments, "will soon become the first carrier to test and deploy a system that will support 200 Gigabits per second . . . (eventually capable of expending to 400 Gbps) . . . ."[32] Other newer entrant carriers, such as Level 3 and Qwest, have also committed to aggressive deployment of significant additional backbone capacity.[33] Williams

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30 See, e.g. Comments of US West at 15-18.

31 Comments of Sprint at 6.

32 Comments of AT&T at 19.

33 Comments of Level 3 ("Level 3 plans to lay approximately 23,000 network miles of fiber-optic cable on three continents."); Comments of Qwest Communications at 5-6 ("Qwest is in the process of constructing a nationwide, high-speed, state-of-the-art packet switched OC-192 fiber optic network which, when completed, will operate at speeds of 10 gigabits.").

Communications, a "carrier's-carrier," similarly reports significant investment in fiber-optic long-haul capacity.[34]

Moreover, ISPs and data CLECs without affiliation to large backbone providers would presumably complain loudest of backbone congestion were an issue preventing "downstream" providers from rolling-out new services. However, these ISPs and data CLECs also rebut the ILECs' claims and explain that backbone capacity and congestion are not a real impediments.[35]

Finally, the comments of telecommunications providers serving rural areas also rebut the RBOC contentions of backbone shortage. As the Rural Telecommunications Group points out, "there is no reason to expect a shortage of backbone facilities . . . in rural areas . . . . Rural telephone companies have deployed fiber backbone networks in Kansas, Oklahoma, Texas, North Carolina, South Carolina, Georgia, South Dakota, Minnesota, and Iowa among other states."[36] OPASTCO confirms that independent rural telephone companies members provide rural consumers with Internet access, DSL, ISDN, frame relay, and DBS services.[37]

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34 Comments of Williams Communications at 3-5.

35 See, e.g., Comments of the DSL Access Telecommunications Alliance at 6 ("a [backbone] bottleneck simply does not exist today"); Comments of America OnLine at 13 ("[t]here currently exists competition in the Internet backbone marketplace. . .").

36 Comments of the Rural Telecommunications Group at 11.

37 Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at 2. See also Comments of Williams Communications at 6 (as demand for capacity in rural areas develops, Williams will deploy additional facilities to meet that demand); Comments of the American Public Power Ass'n. at 11-14 (power companies' existing fiber optic network is uniquely suited to serve bandwidth capacity issues in rural areas).

In CIX's view, the comments presented confirm the overwhelming evidence that Internet backbone services are widely deployed, and the market for such services is robustly competitive. The significant investments made by a many companies – large and small – to improve on future backbone capacity should serve all Americans well. Thus, CIX finds there is no reason for the Commission to intervene in the competitive market for backbone capacity, or to intervene in backbone peering arrangements between ISPs.[38]

IV. The Commission Should Promote Advanced Telecommunications Capability By Opening Up the Local Markets, And Not By Providing ILECs With Premature Regulatory Relief

CIX and the vast majority of non-ILEC commenters agree that a significant impediment to the roll-out of competitive advanced telecommunication capability is the inability of competitive providers to actually get to the consumer.[39] The ILEC's intransigent stance not to open "the last mile" for use by competitive providers is, at this point, a significant impasse between the consumer and the Internet market of diverse, high-speed services.

CIX recommends that the Commission's primary actions in this proceeding should focus on opening up the local loop. This can be accomplished by enforcement of the obligations of Section 251, 252, and 272, as well as by promulgating more functional and effective rules for CLEC collocation, unbundling, and interconnection. Second, as discussed above, ISP choice is

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38 See also Comments of America OnLine at 13 (same).

39 See, e.g., Comments of AT&T Corp. at 23-32; Comments of ALTS at 16-17; Comments of MCI Communications and WorldCom, Inc. at 23.

critical to protect consumer choice and to avoid vertical integration of the vibrant, disaggregated, and highly competitive Internet services industry. Finally, the Commission must undertake a full-scale review of its rules governing ILEC participation in the ISP markets, including marketing practices and provisioning of telecommunications inputs to independent ISPs.

ILEC pleas for deregulation as a means of promoting advanced telecommunications capability are unavailing. CIX believes that ILECs must first demonstrate compliance with the local competition provisions of the 1996 Act, and must supply the ISP industry with local telecommunications inputs on fair and cost-based terms.

In particular, while some ILEC's complain about ISP-related reciprocal compensation obligations to CLECs,[40] these complaints should garnish little attention. It was, after all, the ILECs that favored reciprocal compensation and state control of the process.[41] Moreover, the ILEC's inability to adequately service ISPs in an efficient and nondiscriminatory manner is a significant reason that many ISPs seek out service from CLECs. Commission interference, however, with state reciprocal compensation decisions would diminish the opportunities for ISPs to use CLECs as a competitive alternative to the ILEC's telecommunications offerings, and would disincent the ILECs to resolve issues of provisioning to ISPs. Finally, it should be noted

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40 See Comments of Ameritech at 10.

41 See Reply Comments of Bell Atlantic, CC Dkt. No. 96-98, at i (FCC "should not adopt detailed prescriptive [interconnection] rules that preempt negotiators or the states"), and 21 (in defending a reciprocal compensation arrangement (vs. bill and keep), Bell Atlantic asserted that CLECs could offset excessive reciprocal compensation rates by "sign[ing] up customers whose

(Footnote continued to next page)

that reciprocal compensation agreements were signed by, and often dictated by, the ILECs. The Commission should certainly not attempt to release ILECs from the terms of their agreements with new entrant CLEC competitors.

(Footnote continued from previous page)

calls are primarily inbound, such as . . . internet access providers. The LEC would find itself writing large monthly checks to the new entrant.") (filed May 30, 1996).

Conclusion

In reply, CIX urges the Commission to lay the framework for the deployment of advanced telecommunications capability by opening the ILEC networks for competition and to promote a vibrant array of Internet services by ensuring consumer choice of ISPs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 1998, a copy of the foregoing Reply Comments were mailed, postage prepaid, first class mail to the following:

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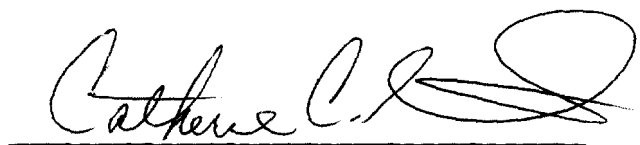

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